

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS CAPPELLO	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 02-CV-2999
LEHIGH COUNTY PAROLE DEPT.,	:	
and DOROTHY STUART	:	

ORDER

AND NOW, this day of December, 2002, upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R.Civ.P. 12(b)(6), and it appearing to the Court that Defendants have presented numerous evidentiary materials outside the pleadings and that this motion is properly treated as one for summary judgment pursuant to Fed.R.Civ.P. 56, it is hereby ORDERED that the Motion is CONTINUED for a period of thirty (30) days from the entry date of this Order to allow Plaintiff the opportunity to show cause why the motion should not be granted and judgment as a matter of law entered in favor of Defendants as a matter of law.¹

¹ Rule 12(b) provides, in relevant part, that "[i]f on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Given that the defendants have raised matters outside of the pleadings here by virtue of their contentions that plaintiff conceded the allegations leading to the revocation of his parole and that his

BY THE COURT:

J. CURTIS JOYNER, J.

underlying criminal conviction has not been terminated, we find that this motion is properly continued to give Plaintiff the opportunity to formulate an appropriate response. Accordingly, we shall defer ruling on this motion for thirty days.